



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,981	09/25/2003	Harry Eugene Flynn	TRX06-01 (1097)	8092

65027 7590 12/29/2006

CHAPIN INTELLECTUAL PROPERTY LAW, LLC  
WESTBOROUGH OFFICE PARK  
1700 WEST PARK DRIVE  
WESTBOROUGH, MA 01581

EXAMINER
----------

ART UNIT	PAPER NUMBER
----------	--------------

DATE MAILED: 12/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	<b>Application No.</b> 10/670,981	<b>Applicant(s)</b> FLYNN ET AL.	
	<b>Examiner</b> James M. Hewitt	<b>Art Unit</b> 3679	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 8/21/06 & 10/2/06 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.  
**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☒ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

Continuation of 10. Other (including any explanation in support of the above items):

As to box 4, the explanation provided should not include any other language than that of the subject matter defined in each of the independent claims. The language of each of the independent claims 12 and 28 should be recited, with references to the specification by page and line number and to the drawings by reference characters provided where appropriate throughout the recited text of each of the claims.

As to box 5, the heading should be "Grounds of Rejection to be Reviewed on Appeal", not "Issues Presented For Review". Further, this section is to be a concise statement listing each ground of rejection presented for review. An example of a concise statement is given in the Federal Register accessible from the PTO web page under the "Board" tab and says: Claims...stand rejected under 35 USC 102(b) as being anticipated by US Patent No...and that is all. There should be no reiteration of the examiner's position. And it should be pointed out that a "claim objection" does not fall under a "ground of rejection" to be reviewed. Claim objections are not appealable matters. Also, as the after-final reply filed 4/28/06 was entered and overcame the 35 USC 112 2nd paragraph rejections of claims 28 and 29, these rejections are no longer rejections, and should not be presented to be reviewed on appeal.

As to box 6, the objections and 35 USC 112 2nd paragraph rejections should not be argued as the objections and rejections are moot. The headings should correspond to those heading provided under "Grounds of Rejection to be Reviewed on Appeal".

As to box 7, the claims appendix should only include a copy of the claims being appealed. No status identifiers should be provided.

  
**JAMES M. HEWITT**  
**PRIMARY EXAMINER**